UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	
	C/A No. 21-02884-EG
Tiffany Marie Welch,	Chapter 13
Debtor(s).	**ORDER DENYING MOTION TO RECONSIDER**

THIS MATTER is before the Court on the *Motion to Reconsider, Alter, or Amend This Court's December 6, 2022 Order Granting in Part and Denying in Part Request for Allowance of Fees Pursuant 11 U.S.C. §§ 330(a) & 503(b)(2)* ("Motion to Reconsider") filed by Jason Moss ("Moss") of Moss and Associates Attorneys, P.A. (the "Firm"), counsel for Tiffany Marie Welch ("Debtor"),[1] asking the Court to alter or amend the *Order Granting in Part and Denying in Part Request for Allowance of Fees Pursuant to 11 U.S.C. §§ 330(a) & 503(b)(2)* ("Order")[2] pursuant to Fed. R. Bankr. P. 9023 and Fed. R. Civ. P. 59(e). The findings of fact and conclusions of law made in the Order are incorporated as if fully set forth herein.[3]

FACTS

On December 6, 2022, the Court entered the Order which, among other things, denied the award of fees charged by the Firm as an administrative expense to be paid through the chapter 13 plan for services in connection with helping the Debtor apply for modification or forgiveness of her student loans—beyond any relief available pursuant to 11 U.S.C. § 523(a)(8) or other provisions of the Bankruptcy Code or Rules—through an online portal outside of the chapter 13 plan process. In the Order, the Court concluded the student loan assistance services were not "in connection with the bankruptcy case" under 11 U.S.C. § 330(a)(4)(B) for the reasons stated

[1] ECF No. 51, filed Dec. 20, 2022.
[2] ECF No. 49, entered Dec. 6, 2022.
[3] To the extent not defined herein, capitalized terms shall have the meaning ascribed to them in the Order.

therein. To be clear, the Court did not conclude that the Firm could not collect such fees; rather, the Court concluded that the fees could be paid outside the chapter 13 plan but would not be awarded as an administrative priority claim through the expedited fee approval process contemplated by SC LBR 2016-1(b)(2).

Having determined that the services failed to meet this threshold requirement to be compensable as administrative claims under the Bankruptcy Code, the Court noted that these services do "not fit squarely within the existing expedited fee procedure of SC LBR 2016-1(b)," stated that "[e]ven if they were deemed to be in connection with the case, the Supplemental Fee Statement falls short of the requirements of SC LBR 2016-1(b)(2), as it does not appear that all factors as set forth above have been met," and held that the fees requested for the student loan services "do not meet the standards of SC LBR 2016-1(b)(2)."

The Motion to Reconsider requests the Court (1) find the legal services and expenses incurred in connection with the services the Firm performed under the "Student Loanify" program to be beneficial and necessary to the Debtor in representing her interests "in connection with the bankruptcy case;" (2) determine a reasonable amount to be awarded for those services as an administrative expense pursuant to 11 U.S.C. § 503(b)(2); and (3) permit the Firm to file another Supplemental Fee Statement for those services. In support of this request, Moss argues that the student loan services were "in connection with the bankruptcy case" and compensable under 11 U.S.C. § 330(a)(4)(B) because obtaining a cancellation of the Debtor's student loan debt will satisfy the student loan claims filed in the case and paid through the confirmed plan, free up funds for the payment of other claims and expenses, facilitate completion of the confirmed plan, and provide the Debtor significant debt relief. Moss also asserts, without explanation, that the student loan services are compensable under SC LBR 2016-1(b)(2) as "additional work necessary as a

result of any matters involving. . .other complicating factors not present in the typical chapter 13 case."

CONCLUSIONS OF LAW

Motions to Reconsider are governed by Federal Rule of Bankruptcy Procedure 9023[4] and Federal Rule of Civil Procedure 59(e). "Rule 59 allows a party to seek an alteration or amendment of a previous order of the court." *Progressive Church of Our Lord Jesus Christ, Inc. v. Progressive Church of Our Lord Jesus Christ-Tallahassee, Inc.*, C/A No. 3:19-cv-03541, 2021 WL 2418493, at *1 (D.S.C. June 14, 2021) (citation omitted). Under Rule 59(e), a court may "'alter or amend the judgment if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice.'" *Id.* (quoting *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 407 (4th Cir. 2010)). "In order to obtain relief under Rule 59(e), the burden rests on the moving party to establish one of these three grounds. *Id.* (citing *Loren Data Corp. v. GXS, Inc.*, 501 F. App'x 275, 285 (4th Cir. 2012)).

Rule 59 motions cannot be used to make arguments that could have been made before the entry of a judgment, nor are they "opportunities to rehash issues already ruled upon because a litigant is displeased with the result." *Id.* (citation omitted). Said differently, "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Doe v. Spartanburg Cnty. Sch. Dist. Three*, 314 F.R.D. 174, 176 (D.S.C. 2016) (quoting *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)).

The Firm has not met its burden to establish that the extraordinary remedy of altering or amending the Order is warranted. The Motion to Reconsider does not demonstrate an intervening

[4] Rule 9023 provides that Federal Rule of Civil Procedure 59 applies in bankruptcy cases and sets a deadline of 14 days after entry of a judgment to file a motion to reconsider.

change in the controlling law, put forth new evidence that was not available at trial, or show that there has been a clear error of law or a manifest injustice. While the Firm disagrees with the conclusion reached by the Court, it has not demonstrated appropriate grounds to warrant the requested relief. The Court acknowledges that to the extent the Debtor's student loan debt is modified or forgiven, that could free up payments to other unsecured creditors. However, these services are akin to representing a debtor in family court to modify his or her domestic support obligations, which, like student loan obligations, are ordinarily non-dischargeable in bankruptcy and must remain current through the life of the plan. In both cases, such services may be beneficial to the debtor and may lead to a modification of the plan, but they must be paid for outside of the chapter 13 plan. The Firm has not advanced any argument it could not have made prior to the entry of the Order, an intervening change in the law, or any new evidence that would alter the Court's prior ruling, and its arguments fail on the merits. Accordingly, the Motion to Reconsider will be denied.

The Court, however, will take this opportunity to further emphasize that given the facts of this case, the services the Firm performed in seeking a cancellation of the Debtor's student loan debt are not compensable under SC LBR 2016-1(b)(2) *even if* they were "in connection with the bankruptcy case" under 11 U.S.C. § 330(a)(4)(B)—which the Court concluded they are not. As set forth in the Order, supplemental fees in addition to the $4,000 expedited fee can be awarded if certain factors are met, which can be summarized as follows: (1) the fees must be for "additional work necessary as a result of any matters involving the default under or variance from the terms of the confirmed plan, adversary proceedings, appeals, or other complicating factors not present in the typical chapter 13 case;" (2) the statement must be filed within "a reasonable time after completion of the additional services;" (3) the supplemental fees must be "authorized by a

conspicuous provision of a written fee agreement filed with the B2030 Form;" and (4) the description of services provided in the Supplemental Fee Statement must contain sufficient information to determine whether the supplemental fee charged is fair and reasonable. *See* SC LBR 2016-1.

First, the Firm's services in seeking cancellation of the Debtor's student loan debt outside of the chapter 13 plan process cannot reasonably be described as being "necessary as a result of any matters involving the default under or variance from the terms of the confirmed plan, adversary proceedings, appeals, or other complicating factors not present in the typical chapter 13 case." The record before the Court does not indicate the Debtor is in default of the plan terms nor are the fees the Firm is seeking for the modification of the confirmed plan. Moreover, while the Firm argues that providing legal services to determine methods to address otherwise nondischargeable student loan debt requested by Debtor post confirmation fits within the local rules allowance for fees and expenses associated with "complicating factors not present in the typical chapter 13 case," the Court disagrees that this case meets such standard.

There are no complicating factors here that are not usually present in a typical chapter 13 case. Like many other chapter 13 debtors, the Debtor has carried the burden of significant student loan debt for years. After her student loan debt remained outstanding following her first case, the Debtor filed for bankruptcy relief a second time. The confirmed chapter 13 plan, once completed, would discharge unsecured debts of less than $2,000. Unless forgiven by the lenders, the Debtor's student loans—as in every other bankruptcy case—would not be discharged through the confirmed plan.

The Court does not dispute Moss's contention that forgiveness of the Debtor's student loans would be a great benefit to her and provide her with significant debt relief. As confirmed by

the testimony at the hearing, however, nothing in the Bankruptcy Code requires that student loans be dealt with through the bankruptcy, and the Firm's program to address student loans is available to clients *even without having to commence a bankruptcy proceeding*. To the extent that the Debtor's student loans were deemed forgiven as a result of her disability, then it may be necessary for the Debtor to amend her plan or seek some other relief from the Court. Such services could be compensable through the expedited procedure outlined in SC LBR 2016-1(b).

Second, the Supplemental Fee Statement for the student loan services fees was not filed within a "reasonable time after completion of the additional services." As the testimony reflects, the Debtor reached out to the Firm on August 9, 2022, regarding the student loans that were not discharged by her first bankruptcy filing. Twelve days after that consultation but before the process had been completed, the Firm filed the Supplemental Fee Statement seeking additional fees of $1,599.00 for the student loan services. The record is clear that as of the time the Supplemental Fee Statement was filed and the hearing was held, there was no confirmation that the student loans had been approved or denied for the administrative discharge, and Korey Williams testified that follow-up may be required even if final approval of such discharge is received. Even if the Firm was to refile the Supplemental Fee Statement once the work is completed, that would not change the fact that the other factors are still not met.

Third, the Retainer Agreement and its attachments filed at the commencement of the bankruptcy case did not expressly exclude student loan services, therefore the fees for such services appear to be included as part of the expedited fee (if we assume that such fees are in connection with the bankruptcy case). SC LBR 2016-1(b)(2) provides the debtor and her counsel may agree to the attorney's supplemental compensation under that Rule for additional work that is necessary only "[i]f expressly authorized by a conspicuous provision of a written fee agreement

filed with the B2030 Form[.]" The Retainer Agreement provides "[the Firm] shall perform all services associated with the bankruptcy matter except for those specifically listed on Schedule A," yet student loan services are not listed on Schedule A and are not even listed in the Additional Fees Disclosure. Student loan services were only arguably excluded when the Amended Additional Fees Disclosure that was filed September 2, 2022 included them on the list of excluded services. Accordingly, the Court concludes student loan services were not expressly authorized as supplemental services under the original Retainer Agreement with the Debtor.

Finally, the Supplemental Fee Statement does not adequately describe the student loan services for which the Firm seeks compensation. SC LBR 2016-1(b)(2) requires that the description in the Supplemental Fee Statement of the services for which compensation is sought "contain sufficient information to determine whether the supplemental fee charged is fair and reasonable." Unlike a commonplace service like a motion for moratorium, it is not immediately apparent what services are involved in the Firm's student loan fees, and simply stating "Student Loanify (8.15.22)" in the Supplemental Fee Statement does not provide any more clarity. Notably, even after the description of the program provided at the hearing, the Firm has not met its burden to prove that even if allowed under the expedited supplemental fee process, the fees are fair and reasonable. The Court is cognizant of the burden student loans impose on millions of Americans and recognizes that the Debtor receiving full forgiveness of her student loans would be a great benefit to her personally. However, the Firm has not met its burden to prove the reasonableness of the Student Loanify Fees in addition to the No-Look Fee that is already being paid or that, in this case and under these facts, these fees should fall within the supplemental fee procedure allowing them to be paid through the plan.

IT IS, THEREFORE, ORDERED THAT the *Motion to Reconsider, Alter, or Amend This Court's December 6, 2022 Order Granting in Part and Denying in Part Request for Allowance of Fees Pursuant 11 U.S.C. §§ 330(a) & 503(b)(2)* is denied.

AND IT IS SO ORDERED.

FILED BY THE COURT
01/04/2023

Elisabetta G. M. Gasparini
US Bankruptcy Judge
District of South Carolina

Entered: 01/04/2023