UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:
American Paper Mills Of Vermont, Inc.,
Debtor.

Chapter 11 Case # 02-10923

ORDER
DENYING MOTION FOR RECONSIDERATION

Arcadia, Inc., Arcadia Energy LLC, and Harold Slone (collectively, the "Arcadia Parties") have filed a Motion for

(1) Reconsideration of the Court's Order Entered August 3, 2004 Granting the Committee's Motion for Authority to Commence and Prosecute Adversary Proceeding on Behalf of American Paper Mills of Vermont, Inc. Pursuant to 11 U.S.C. §§ 1103 and 1109 ("the Motion"); and

(2) Amendment and Clarification of this Court's Order Pursuant to Rule 9023 of the Rules of Bankruptcy Procedure (with Incorporated Memorandum of Law)

(doc. # 341) (the "Motion to Reconsider"). The Arcadia Parties assert that reconsideration is necessary because this Court misapprehended the applicable law and pertinent facts.

In its August 3, 2004 Order (doc. # 336), this Court found that the Motion was timely filed, that the Committee had standing to commence the proposed adversary proceeding on behalf of the Debtor, and that the proposed complaint would survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The Order authorized the Official Committee of Unsecured Creditors ("the Committee") to proceed with its proposed adversary proceeding against the Arcadia Parties seeking damages under § 363(n) subject to the condition that the estate would not be bound to pay legal fees therefor unless the estate benefitted from the litigation.

Although the Federal Rules of Bankruptcy Procedure, which incorporate certain procedural requirements of the Federal Rules of Civil Procedure, do not specifically address motions for reconsideration, the Court's Local Rules do. Pursuant to Vt. LBR 9013-1(I), a motion captioned as "Motion to Reconsider" shall be construed as a "Motion for Relief from a Judgment or Order." As such, in order to prevail, the movant must set forth grounds sufficient to satisfy the criteria of Fed R. Bankr. P. 9023 or 9024. See id.; see also, e.g.,

In re Arms, 238 B.R. 259 (Bankr. D. Vt. 1999); In re Village Craftsman, Inc., 160 B.R. 740, 744 (Bankr. D. N.J. 1993)(collecting cases).

In the Motion to Reconsider, the Arcadia Parties argue that it was an error for the Court to rely upon Szybist v. Aircraft Acquisition Corp. (In re Taylorcraft Aviation Corp.), 163 B.R. 734 (Bankr. M..D. Pa. 1993) in addressing their argument that the Committee's asserted cause of action under § 363(n) is time barred. They assert that the one-year statute of limitations set forth in Rule 60(b)(3) applies and the Taylorcraft case is inapposite. The Court has reviewed this question anew and affirms its prior conclusion. Its rationale is that § 363(n) of the Bankruptcy Code contemplates two remedies if the sale price of estate property was controlled by an agreement among potential bidders: (1) avoidance of the sale; or (2) recovery of damages from a party to the agreement for any amount by which the value of the property sold exceeds the price at which such sale was consummated. Unlike the case law relied upon by the Arcadia Parties, the Committee's proposed adversary proceeding seeks damages from the Arcadia Parties and not avoidance or revocation of this Court's sale order. This compels a different result. After considering the arguments presented, the Court continues to find the reasoning of Taylorcraft to be sound and on point, to hold that the nature of the relief sought determines which statute of limitations applies, and to conclude that Vermont's six-year statute of limitations controlling fraud actions applies to the instant proceeding. Thus, the Arcadia Parties' Motion to Reconsider whether the Committee's proposed adversary proceeding is timely is DENIED.

The Arcadia Parties also assert that this Court should amend its Order to address issues raised by the Tenth Circuit Bankruptcy Appellate Panel in United Phosphorus, Ltd. v. Fox (In re Fox), 2004 WL 509605 (B.A.P. 10th Cir. 2004). However, In re Fox is not binding on this Court and this Court sees no reason why such supplemental findings and conclusions are necessary to the resolution of the instant proceeding. Second Circuit precedent controls resolution of this matter. The Order sets forth the criteria articulated by the Second Circuit in Glinka v. Murad (In re Housecraft Indus. USA, Inc.), 310 F.3d 64, 70 (2d Cir. 2003), and explains the basis of its finding that the Committee has met those criteria. Therefore, the Court declines the Arcadia Parties' request that the Court amend its August 3rd Order, and DENIES that aspect of the motion as well.

THE COURT FINDS that the Arcadia Parties' remaining arguments are without merit.

THE COURT FINDS Bankruptcy Rule 9023 is inapplicable in this instance and that the Arcadia Parties have failed to satisfy the criteria for relief under Bankruptcy Rule 9024.

Accordingly, IT IS HEREBY ORDERED that the Motion for Reconsideration filed by Arcadia, Inc., Arcadia Energy LLC, and Harold Slone is DENIED.

SO ORDERED.

September 3, 2004
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge