UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:
Christopher Bradley
Debtor.

Chapter 7 Case
 # 04-11645

ORDER DENYING MOTION FOR RECONSIDERATION

On September 13, 2005, the Debtor filed an omnibus objection to claims (the "Objection") under the default procedure authorized by Vt. LBR 9013-4, setting September 29, 2005 as the deadline for any response or opposition to the Objection and October 11, 2005 as the date for any hearing on the Objection and any responses or opposition thereto (doc # 99). On September 28, 2005, Chittenden Bank filed a response to the Objection, clarifying the status of the proofs of claim it had filed and raising no opposition to the relief sought in the Objection (doc # 100). On September 30, 2005, the Debtor's counsel filed a copy of a letter she had received from Cota CPA, one of the creditors whose claim was included in the Objection, opposing the disallowance of his claim and articulating grounds upon which the Court could rely to allow his proof of claim (doc # 101). Although the letter from Cota CPA was not filed until one day after the deadline set in the notice, it was dated prior to the expiration of the deadline, it was interposed by a *pro se* creditor and the Debtor did not assert any objection to the Court's consideration of this response, either when it was filed or thereafter.

The only party to appear at the hearing held on October 11, 2005 was the case trustee, Douglas Wolinsky, Esq., and he indicated that he did not dispute any of the objections and that he took no position with regard to the responses filed. The Court found the response of Cota CPA to be persuasive and sufficient to overrule the Debtor's objection to his claim. The Court also found that the objection to the claim of Linda Bradley, based solely on the claim being unliquidated and subject to determination by Family Court, to be insufficient to disallow the claim on the merits. Therefore, the Court modified the proposed order filed by the Debtor to provide that the claim of Linda Bradley would be disallowed at this time, subject to reconsideration if and when the claim is liquidated by the Family Court. See Order entered on October 11, 2005 (doc # 102).

On October 13, 2005, the Debtor filed a motion to reconsider this Order, asserting in essence that (1) the Debtor was not required to appear at the hearing since no timely responses had been filed in opposition to the relief sought, (2) that the Cota CPA claim should have been disallowed since Cota CPA did not file a timely opposition to the Objection, and (3) the claim of Linda Bradley should likewise have been disallowed *in toto* because Linda Bradley did not file any opposition to the Objection. For the reasons set forth below, the Court finds the Motion to Reconsider to be without merit.

Standard of Review

The Bankruptcy Rules incorporate many procedures of the Federal Rules of Civil Procedure. Bankruptcy Rule 9023, which pertains to motions for new trials and for amendment of judgments, incorporates Rule 59 of the Federal Rules of Civil Procedure, except as provided in Bankruptcy Rule 3008 (which is not applicable here). In general, "[a] motion to rehear or reconsider will be construed as a motion to alter or amend a judgment under Fed.R.Civ.P. 59(e)." In re Crozier Bros., Inc., 60 B.R. 683, 687 (S.D. N.Y. 1986). Reconsideration under FED.R.CIV.P. 59(e), made applicable here by Bankruptcy Rule 9023, is warranted when there has been a clear error or manifest injustice in an order of the court or if newly discovered evidence is unearthed. See Doe v. New York City Dep't of Soc. Servs., 709 F.2d 782, 789 (2d Cir.), cert. denied, 464 U.S. 864 (1983). To prevail, the Debtor must show that the court overlooked factual matters or controlling precedent "that might have materially influenced its earlier decision." Robins v. Max Mara, U.S.A., Inc., 923 F.Supp. 460, 473 (S.D. N.Y.1996). This criterion is strictly construed against the moving party. Monaghan v. SZS 33 Assocs., L.P., 153 F.R.D. 60, 65 (S.D. N.Y.1994); New York News Inc. v. Newspaper & Mail Deliverers' Union, 139 F.R.D. 294, 294-95 (S.D. N.Y.1991), aff'd sub nom, New York News Inc. v. Kheel, 972 F.2d 482 (2d Cir.1992).

Discussion

The Debtor has submitted no evidence which demonstrates cause for reconsideration under Rule 59(e). While there might be grounds to find that the Debtor's failure to appear at the hearing was the result of excusable neglect, the Debtor has not presented any argument on this. Under the local rule establishing the default procedure the Court **may** grant the relief without a hearing. However, neither use of the default procedure nor the lack of opposition to a motion guarantees that a motion will be granted. If there is no opposition the Court will make its determination based upon the record and an analysis of whether the movant has satisfied all statutory and procedural predicates. Vt LBR 9013-4(a) specifically provides "if an order has not been entered before the hearing date, the scheduled hearing shall proceed." Here, the Court had not entered an order on the motion prior to the date and time set for the hearing, so the hearing proceeded as noticed.

Since the Debtor presented no argument in response to Cota CPA's opposition to the Objection and the Court found it just and proper to consider Cota CPA's opposition, the Court made a determination based upon the proof of claim and explanatory letter of Cota CPA. Since the Debtor did not present in the Objection a legal basis for disallowing the claim of Linda Bradley on its merits, arguing only that the claim should be disallowed because it was unliquidated, and did not appear at the hearing to supplement his argument or present a basis for disallowance on the merits, the Court relied on the record before it in ruling on the Objection with regard to Linda Bradley's claim as well. The Motion to Reconsider does not assert any

persuasive legal basis for disturbing either of these determinations.

Conclusion

The Court finds that the motion to reconsider fails to establish that there was a clear error or manifest injustice in the subject Order or to introduce new evidence probative to the ruling, as is necessary to vacate or amend the Order under Rule 59(e). Therefore, the motion to reconsider is denied.

SO ORDERED.

October 14, 2005
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge