

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



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**In re:**

**Matthew C. Abel,  
Debtor.**

**Chapter 13  
Case # 19-10010**

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**In re:**

**William K. Harrington, U.S. Trustee,  
Plaintiff,  
vs.  
Synergy Law, LLC, Synergy Attorney  
Services, LLC, Sheldon M. Katz,  
Scott Marinelli, Dave Maresca,  
Monica Chapman, Stephanie Turk,  
Georgia Myers, and Terrylle Blackstone,  
Defendants.**

**Adversary Proceeding  
# 19-01003**

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**ORDER**

**SUSTAINING PLAINTIFF U.S. TRUSTEE'S OBJECTION  
AND DENYING DEFENDANTS' MOTION FOR NEW TRIAL**

On September 27, 2019, the Court entered a memorandum of decision and order granting in part, denying in part, and staying in part the motion for default judgment filed by the U.S. trustee (the "UST" or the "Plaintiff") against the Synergy Defendants (doc. ## 27, 28). The Court approved, and the Clerk of Court entered, a judgment on January 17, 2020 (doc. # 38). On February 19, 2020, Defendant Terrylle Blackstone filed *pro se* a request for relief captioned as a motion for new trial under Bankruptcy Rule 9023 (doc. # 40, the "Motion"), on behalf of himself and Defendants Dave Maresca, Monica Chapman, Georgia Myers,<sup>1</sup> and Stephanie Turk (the "Movants"). On March 2, 2020, the Court entered a Scheduling Order (doc. # 41) setting a March 16<sup>th</sup> deadline for the UST to file a response to the Motion and a March 23<sup>rd</sup> deadline for replies to any response. The UST filed a timely response (doc. # 43) objecting to the relief sought in the Motion; no replies were filed. On March 25, 2020, the Court took the matter under advisement and canceled the hearing that had tentatively been set for March 31, 2020.

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<sup>1</sup> The Court notes that it denied the motion for default judgment in its entirety as to Defendant Georgia Myers for insufficient service (see doc. # 27, pp. 4–5, doc. # 28).

The Motion seeks a new trial under Bankruptcy Rule 9023 on several grounds: (1) the Plaintiff failed to comply with Local Bankruptcy Rule (“LBR”) 7055-1 (doc. # 40, pp. 2–3); (2) the adversary proceeding is complex, and the Movants need an opportunity to present meritorious defenses (*id.* at pp. 3–4); and (3) the default judgment was based on a manifest error of law (*id.* at pp. 4–5).

First, the Movants assert they are entitled to relief based on the Plaintiff’s failure to comply with LBR 7055-1, because that rule requires that “[p]arties seeking a default judgment must first obtain an entry of default from the Clerk, and then apply for a default judgment,” and further requires that “[a] party seeking default judgment by the Court must file ... a reference to the document number of the entry of default by the Clerk as listed on the docket.” Vt. LBR 7055-1(a), (f)(3). The Movants argue the Plaintiff’s filing of a motion for a default judgment prior to entry of default is a fatal procedural error that requires a vacating of the default judgment. The purpose of LBR 7055-1 is to make clear that obtaining a default judgment is a two-step process. The moving party must first show there was a default, and the Clerk will then docket an entry of default. Thereafter, the Court will consider a motion for default judgment, which relief is not available until after the entry of default. It is more convenient for a movant to file a motion for default judgment after the default has been entered, so that motion may include the specifics of the entry of default. However, that is merely a procedural convenience this Court established in its local rules. This Court may, in its discretion, waive compliance with a local rule in the interest of justice.<sup>2</sup> If the Court finds a motion for default judgment is sufficient based on the record in the case, it may grant relief notwithstanding an irregular sequencing of the filings or omission of a document number in the motion.

In this proceeding, it is true the Plaintiff filed the two motions out of order: the UST filed the motion for default judgment by the Court on June 12, 2019 (doc. # 19) and did not file the motion for entry of default by the Clerk (erroneously captioned as seeking “entry of default judgment” by the Clerk) until June 20, 2019 (doc. # 22). The Court addressed this procedural issue at the June 21<sup>st</sup> hearing, at which time the Court explained the two-step process in its Local Rules and, based on the record in the case and representations at that hearing, approved the UST’s request for entry of default. The Clerk then entered the default on September 26, 2019 (doc. # 26). Based on the Clerk’s entry of default and the record in this case, the Court then granted the Plaintiff’s motion for default judgment. This is consistent with the requirements of Bankruptcy Rule 7055 and Rule 55. Since the Court granted the Plaintiff’s motion for default judgment after the entry of default, THE COURT FINDS the Movants’ argument based on LBR 7055-1 fails.

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<sup>2</sup> The Court has considerable discretion to deviate from its local rules. See Vt. LBR 9029-1(c) (the Court may change or suspend any of the local rules in the interest of justice, *sua sponte* or on motion showing good cause). See also *Liani v. Baker*, 2010 U.S. Dist. LEXIS 64785, \*35–36, 2010 WL 2653392 (E.D.N.Y. Jun. 29, 2010) (finding bankruptcy court had substantial discretion to depart from local rules under similar provision).

The Movants' second argument is that they are entitled to relief based on possible confusion due to the complexity of this adversary proceeding<sup>3</sup> and their need for an opportunity to present meritorious defenses.<sup>4</sup> This argument is wholly unpersuasive because the Movants have already had ample opportunity to appear in this adversary proceeding, present any defenses to the Plaintiff's claims, or request clarification as to any perceived complexities or confusion regarding the record, and they chose not to do so. The UST filed the instant complaint on April 15, 2019 (doc. # 1), and the Movants had until May 15, 2019 to file an answer or other responsive pleading (doc. # 2). The Movants did not file an answer or any other responsive pleading by – or even after – the response deadline, and they did not submit any other filing in this adversary proceeding at any time prior to filing the Motion on February 19, 2020 (doc. # 40). It is too late for them to now assert the need to raise defenses on the merits. The Court is particularly unconvinced by their self-description as “the uninitiated in defense of Adversary Proceedings” (doc. # 40, p. 3), since the Plaintiff prevailed on his causes of action precisely because the Synergy Defendants, including the Movants, held themselves out as bankruptcy experts, e.g., as a “Full Service Law Firm” that would manage the Debtor's bankruptcy case (doc. # 27, p. 9), and this case is only one of a series of cases where the Synergy Defendants, again including the Movants, have been subject to litigation for failing to disclose their identity as bankruptcy petition preparers, in this and in other districts (*id.* at p. 11–12). Thus, THE COURT FINDS the Movants' second argument, based on their possible defenses and potential confusion, also fails.

In their final argument, the Movants contend they are entitled to a new trial because the default judgment was based on a manifest error of law. However, the only error of law the Movants allege is the Plaintiff's filing of the motion for default judgment prior to obtaining entry of default. As the Court has already found this argument to be without merit, the Movants have failed to show any manifest error of law. The Movants also contend that the default judgment against them was “inequitable under the totality of the circumstances” (doc. # 40, p. 5), but they provide no factual or legal basis for relief on this ground. Hence, THE COURT FINDS the Movants' final argument is also unavailing.

Accordingly, THE COURT FINDS none of the Movants' arguments warrant either a new trial or a vacating of the default judgment.

#### THE PLAINTIFF'S ARGUMENTS

The Court turns next to the three reasons the UST puts forth as grounds for denial of the Motion.

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<sup>3</sup> While the Movants assert there is a possible basis for confusion as to whether the adversary proceeding continued to be prosecuted against them (as opposed to only against entities Synergy Law and Synergy Attorney Services) or whether the automatic stay triggered by Synergy Law's bankruptcy case also stayed or ended their personal involvement in the adversary proceeding (doc. # 40, pp. 3–4), the Movants do not assert they actually were confused or believed they were no longer defendants to this adversary proceeding, or cite any legal authority that would give rise to their confusion.

<sup>4</sup> Rather than articulating specific defenses on the merits, the Movants merely allude to some possibilities – “[f]or example, some of the Movants may not oppose the injunctive relief but defend against ... disgorgement of fees they did not receive, and over which they had no control, or ... fines for conduct which they did not perform or over which they had no control or direction” (doc. # 40, p. 3). These musings are insufficient to demonstrate they have actual defenses.

In his Objection (doc. # 43, the “Objection”), the UST argues: (1) Bankruptcy Rule 9023 does not apply and relief is not warranted under Rule 60(b) (doc. # 43, pp. 4–5); (2) even if Bankruptcy Rule 9023 applies, the Motion is untimely (id. at pp. 3–4); and (3) the Movant’s argument regarding the Local Rules is without merit (id. at pp. 5–6).

First, and most fundamentally, the Plaintiff contends the Court should deny the Motion because Bankruptcy Rule 9023 does not apply to this matter. He asserts that Rule pertains to granting a new trial after a trial has been held, whereas here relief was granted on default and there was no trial. The UST argues it is Rule 55, incorporated by Bankruptcy Rule 7055, which applies. Rule 55 provides, in pertinent part:

Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

Fed. R. Civ. P. 55(c) (emphasis added). Rule 60(b) provides:

Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). To prevail on their Motion, the Movants have the burden of demonstrating one of the six grounds set out in Rule 60(b). The Plaintiff asserts the Movants have not met that burden, as they have not articulated any basis for relief that satisfies any of those six grounds. The Court agrees. Therefore, to the extent the Motion should be construed as one seeking relief from the final default judgment under Rule 60(b), THE COURT FINDS such relief is not warranted because the Movants failed to sustain their burden under Bankruptcy Rule 7055 and Rule 60(b), and the first prong of the UST’s Objection prevails.

Second, the Plaintiff argues that, even if the Motion is proper under Bankruptcy Rule 9023, it still fails because the Motion is untimely under that rule. Bankruptcy Rule 9023 provides, in pertinent part, “[e]xcept as provided in this rule ... Rule 59 ... applies in cases under the Code. A motion for a new trial ... shall be filed ... no later than 14 days after entry of judgment.” Fed. R. Bankr. P. 9023. Here, the judgment entered on January 17, 2020 (doc. # 38). The Movants had 14 days from that date – until

January 31, 2020 – to timely file a motion for a new trial.<sup>5</sup> The Movants did not file the Motion until February 19, 2020 (doc. # 40), 19 days after the deadline had passed. Accordingly, to the extent Rule 9023 applies, THE COURT FINDS the Motion is untimely and the UST has demonstrated cause to deny the Motion, in the second prong of the Objection.

In his last argument, the Plaintiff maintains the Movants' argument that the sequence of the Plaintiff's filings justifies a new trial or a vacatur of the default judgment is wholly without merit because the Movants failed to present any case law to support their Local Rules argument, failed to appear and present this argument at the June 21, 2019 hearing, and "squandered their multiple opportunities to defend" (doc. # 43, p. 6) or otherwise participate in the adversary proceeding. As the Court found above that the Movants' argument based on LBR 7055-1 fails, THE COURT FINDS this final prong of the UST's Objection compelling.


#### CONCLUSION

In sum, THE COURT FINDS none of the Movants' arguments warrant either a new trial or vacatur of the default judgment, and the Plaintiff's objections are sound, persuasive under the facts of this case, and supported by both the record in this proceeding and the controlling Bankruptcy Rules.

Accordingly, based on the forgoing findings, the record in this adversary proceeding, and the arguments presented in the Motion and the Objection, IT IS HEREBY ORDERED the Plaintiff's Objection is SUSTAINED, and the Movants' Motion is DENIED.

SO ORDERED.

April 16, 2020  
Burlington, Vermont

  
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Colleen A. Brown  
United States Bankruptcy Judge

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<sup>5</sup> The UST argues the Motion is untimely based on the 28-day deadline set forth in Rule 59. However, while Bankruptcy Rule 9023 incorporates Rule 59, it also modifies that Rule to provide for a 14-day deadline in bankruptcy proceedings.