

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**THE CONSOLIDATED FGH  
LIQUIDATING TRUST f/k/a  
FRIEDE GOLDMAN HALTER,  
INC. et al.  
Jointly Administered**

**CHAPTER 11**

**CASE NO. 01-52173 EE**

**ORDER DENYING  
MOTION TO ALTER AND AMEND JUDGMENT**

Before the Court is the *Motion to Alter and Amend Judgment* (the “Motion to Amend”) (Dkt. No. 7829) filed by the Liquidating Trustee for The Consolidated FGH Liquidating Trust (the “Liquidating Trustee”) on November 16, 2009, and the *Memorandum in Opposition to Motion to Alter and Amend Judgment* (the “Response”) (Dkt. No. 7834) filed by OK Shipping Limited (“OK Shipping”). The Court, being fully advised in the premises, finds that the Motion to Amend should be denied.

**FACTUAL BACKGROUND**

1. On November 6, 2009, the Court entered its Memorandum Opinion Granting OK Shipping Limited’s *Amended Motion for Limited Relief from Automatic Stay* (the “Opinion”) (Dkt. No. 7822) and the Final Judgment on OK Shipping Limited’s *Amended Motion for Limited Relief from Automatic Stay* (the “Final Judgment”) (Dkt. No. 7823).

2. The Court concluded as follows in the Opinion:

Based on the foregoing analysis, the Court concludes that OK Shipping did not waive its right to assert arbitration. The Court further concludes that the stay should be lifted for cause under 11 U.S.C. § 362(d)(1) for purposes of allowing arbitration to proceed and for entry of a final and binding decision or award, but not for entry of judgment in any court of competent jurisdiction or for purposes of collection of any award that may be obtained by OK Shipping through the arbitration process.

At this time the Court will make no determination on matters in Adversary Proceeding No. 05-05013 EE regarding the Liquidating Trustee's Objection to Claim of OK Shipping. Matters involving the claims process and any distribution that may ultimately be made to OK Shipping, if any, will be reserved until a determination is made on the merits of the claim as to liability and liquidation of the claim, subject to further order of the Court.

Opinion at 23-24.

3. On November 16, 2009, the Liquidating Trustee filed its Motion to Amend, in which relief was requested pursuant to Federal Rule of Civil Procedure 59(e), made applicable by Federal Rule of Bankruptcy Procedure 9023. The Liquidating Trustee asserts that the relief sought is necessary to correct a clear error of law or to prevent manifest injustice. Relief is not sought on the basis of newly discovered evidence or upon an intervening change in controlling law.

4. In the Motion to Amend, the Liquidating Trustee requests that the Court alter and amend the Final Judgment and Opinion to indicate that:

(i) OK Shipping Limited, Inc. ("OK") can take no action against the Trust upon the entry of a final and binding decision or award obtained in favor of OK through the arbitration process with such an award being a pre-petition general unsecured claim; and (ii) the arbitration of the consequential damage portion of the claim is prohibited under the Contract for the Construction of an Aluminum Utility Vessel (the "Shipbuilding Contract").

Motion to Amend at 1.

5. On December 7, 2009, OK Shipping filed its Response in opposition to the Motion to Amend contending that the relief sought is an extraordinary remedy and no compelling reason has been shown for the Court to alter or amend its Final Judgment and Opinion. In its Response, OK Shipping reasoned as follows:

It is clear that this Court has already reserved its power to control the enforcement of any award OK may receive in arbitration. The only way for OK to take any action to enforce the arbitration award is to return to this Court, at which time the Court will determine the status of the claim and the distribution to be made

to OK. Thus, no further amendment or alteration to the Judgment is needed.

And the Court's Judgment does not need to be amended to exclude OK's claim for consequential damages from the arbitration because the Contract allegedly precludes consequential damages. The arbitrators are already bound by whatever limitations on damages are provided in the Contract.

Response at 2.

## CONCLUSIONS

The Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. The Motion to Amend is a core proceeding as defined in 28 U.S.C. § 157(b).

A motion to alter or amend a judgment may be filed pursuant to Federal Rule of Civil Procedure 59(e). The Fifth Circuit has provided the following regarding requests for reconsideration under Rule 59(e):

A Rule 59(e) motion "calls into question the correctness of a judgment." *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir.2002). This Court has held that such a motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment. *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir.1990). Rather, Rule 59(e) "serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir.1989) (internal quotations omitted). Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly. *Clancy v. Employers Health Ins. Co.*, 101 F.Supp.2d 463, 465 (E.D.La.2000) (citing 11 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2810.1, at 124 (2d ed.1995)).

*Templet v. HydroChem Inc.* 367 F.3d 473, 478-79 (5th Cir. 2004). *See Motharam, Inc. v. Scottsdale Ins. Co.*, 2009 WL 3126500 (E.D. La. Sept. 24. 2009) (to succeed on a Rule 59(e) motion, a party must clearly establish either a manifest error of law or fact or must present newly discovered evidence, citing *Ross v. Marshall*, 426 F. 3d 745, 763 (5th Cir. 2005)).

The Liquidating Trustee's first request is that the Final Judgment and Opinion be amended to indicate that OK Shipping can take no action against the Trust upon entry of a final and binding decision or award obtained in favor of OK through the arbitration process since such an award would be a pre-petition general unsecured claim. The Court agrees with the analysis and arguments made by OK Shipping in its Response. The Court has already reserved power to control the enforcement of any award that may be received in arbitration by prohibiting collection of any award and reserving determination on the merits of OK Shipping's claim.

The Liquidating Trust also desires an amendment to indicate that the arbitration of the consequential damage portion of the claim is prohibited under the Contract for the Construction of an Aluminum Utility Vessel. OK Shipping has pointed out that the judgment "does not need to be amended to exclude OK's claim for consequential damages from the arbitration because the Contract allegedly precludes consequential damages." Response at 2. On this point, OK Shipping contends the following:

Furthermore, to the extent that the Article XVIII, para. 1, of the Contract may be considered ambiguous as to the application of Louisiana law to OK's entire claim against Halter, "the arbitrator, not the courts, is the one to interpret ambiguous provisions of a contract." *Marshall Durbin Poultry Co., Inc., v. United Food and Commercial Workers Union, Local 1991*, 2001 WL 33325702 at \*5 (S.D. Miss. 2000) (citing *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599, 80 S. Ct. 1358, 4 L.Ed. 2d 1424 (1960)). Accordingly, this too is an issue to be determined by the arbitrators and not by this Court.

Response at 6.

The Court concludes that the Liquidating Trustee has established no clear error of fact or law or any manifest injustice by the Court's prior Final Judgment and Opinion. Concerns that are expressed in the Motion to Amend have already been addressed by and protected in the prior ruling or are within the purview of the arbitration board to address by acknowledging or determining

limitations on its decision set by the underlying contract between the parties.

The Court concludes that grounds for granting the Motion to Amend have not been established and it should be, and hereby is, denied.

SO ORDERED this the 18<sup>th</sup> day of December, 2009.

**/S/ EDWARD ELLINGTON**  
**EDWARD ELLINGTON**  
**UNITED STATES BANKRUPTCY JUDGE**